

§ 780.159 Forest products.

Trees grown in forests and the lumber derived therefrom are not agricultural or horticultural commodities, for the purpose of the FLSA. (See § 780.205 regarding production of Christmas trees.) It follows that employment in the production, cultivation, growing, and harvesting of such trees or timber products is not sufficient to bring an employee within sec. 3(f) unless the operation is performed by a farmer or on a farm as an incident to or in conjunction with his or its farming operations. On the latter point, see §§ 780.200 through 780.209 discussing the question of when forestry or lumbering operations are incident to or in conjunction with farming operations so as to constitute agriculture. For a discussion of the exemption in sec. 13(b)(28) of the Act for certain forestry and logging operations in which not more than eight employees are employed, see part 788 of this chapter.

[73 FR 77238, Dec. 18, 2008. Redesignated at 74 FR 26014, May 29, 2009]

EFFECTIVE DATE NOTE: At 74 FR 26014, May 29, 2009, § 780.115 was redesignated as § 780.159 and newly designated § 780.159 was suspended, effective June 29, 2009.

Subpart C—Agriculture as It Relates to Specific Situations

FORESTRY OR LUMBERING OPERATIONS

§ 780.200 Inclusion of forestry or lumbering operations in agriculture is limited.

Employment in forestry or lumbering operations is expressly included in agriculture if the operations are performed “by a farmer or on a farm as an incident to or in conjunction with such farming operation.” While “agriculture” is sometimes used in a broad sense as including the science and art of cultivating forests, the language quoted in the preceding sentence is a limitation on the forestry and lumbering operations which will be considered agricultural for purposes of section 3(f). It follows that employees of an employer engaged exclusively in forestry or lumbering operations are not considered agricultural employees.

§ 780.201 Meaning of “forestry or lumbering operations.”

The term “forestry or lumbering operations” refers to the cultivation and management of forests, the felling and trimming of timber, the cutting, hauling, and transportation of timber, logs, pulpwood, cordwood, lumber, and like products, the sawing of logs into lumber or the conversion of logs into ties, posts, and similar products, and similar operations. It also includes the piling, stacking, and storing of all such products. The gathering of wild plants and of wild or planted Christmas trees are included. (See the related discussion in §§ 780.205 through 780.209 and in part 788 of this chapter which considers the section 13(a)(13) exemption for forestry or logging operations in which not more than eight employees are employed.) “Wood working” as such is not included in “forestry” or “lumbering” operations. The manufacture of charcoal under modern methods is neither a “forestry” nor “lumbering” operation and cannot be regarded as “agriculture.”

[74 FR 26014, May 29, 2009]

§ 780.202 Subordination to farming operations is necessary for exemption.

While section 3(f) speaks of practices performed “in conjunction with” as well as “incident to” farming operations, it would be an unreasonable construction of the Act to hold that all practices were to be regarded as agricultural if the person performing the practice did any farming, no matter how little, or resorted to tilling a small acreage for the purpose of qualifying for exemption (*Ridgeway v. Warren*, 60 F. Supp. 363 (M.D. Tenn.); *re Combs*, 5 WH Cases 595, 10 Labor Cases 62,802 (M.D. Ga.)). To illustrate, where an employer owns several thousand acres of timberland on which he carries on lumbering operations and cultivates about 100 acres of farm land which are contiguous to such timberland, he would not be engaged in agriculture so far as his forestry or lumbering operations are concerned. In such case, the forestry or lumbering operations would clearly not be subordinate to the farming operations but rather the principal or a separate business of the “farmer.”